56

1949

Fall Assizes.

Prince Rupert.

REX

vs.

Earl Johnson

Offence Murder

CROWN BRIEF

TO BE RETURNED TO
ATTORNEY-GENERAL'S OFFICE
VICTORIA, B.C.

200-149-7035

accused in this case one Earl J. charged
wilful murder of his brother Vic J.
on board the latters fishing boat Tyee III
at P. R. on Sat night 2nd-3rd inst
Deceased was captain of the vessel
and accused was member of crew.
Evdce of Crown will show
I deceased and accused on friendly
terms until about 8:30 or 9 p.m.
That after that time accused was
drinking & quarrelled with deceased
with result that he
drinking
Quarrel (verbal)
~~About 9:30 and after two & a~~
as a result of which shooting took place
about 10 p.m.
Evdce of Crown conflicting
duty as C. P. to call all evdce
jury to decide which to believe

Before Wilson J. at Prince Rupert
2:30 P.M. Wed. 28th Sept. 49 - Trial commenced
E. P. for Crown
McLeod & Ray for defence.
10:00 A.M. Thurs. 29th Sept 49 trial resumed
Judges charge 8:25 P.M.
Jury retires 9:30 P.M.
returns 12:40 a.m. 30th

Not Guilty

REX vs. JOHNSON.

As to prosecution calling all witnesses on trial who were called at preliminary hearing -- Rex vs. Seneviratne, 1936, 3 W.W.R., 360 (P.C.) at p.377-378, per Lord Roche:

> " . . . It is said that the state of things above described arose because of a supposed obligation on the prosecution to call every available witness on the principle laid down in such a case as Ram Ranjan Raj v. Reg. (1914) I.L.R. 42 Cal. 422, to the effect that all available eye witnesses should be called by the prosecution even though, as in the case cited, their names were on the list of defence witnesses. Their Lordships do not desire to lay down any rules to fetter discretion on a matter such as this which is so dependent on the particular circumstances of each case. Still less do they desire to discourage the utmost candour and fairness on the part of those conducting prosecutions; but at the same time they cannot, speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defence. If it does so confusion is very apt to result and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination. Witnesses essential to the unfolding of the narrative on which the prosecution is based must, of course, be called by the prosecution, whether in the result the effect of their testimony is for or against the case for the prosecution. Thus, in the present case, the maid Alpina and Dr. S. C. Paul were indispensable Crown witnesses. As to some of the other witnesses, there might have been both less confusion and a fairer trial if, though their names were on the indictment, they had been put into the box to be questioned as to other than formal matters by the defending counsel. As the trial was conducted the result was unhappy."

Port Edward, B. C.,
September 15th.,1949,
4:05 p.m.

STATEMENT of Mrs. Irene Godmaire, North Pacific Cannery, at present, or at Digby Island, Ed Wall's boat works.

I went aboard the Izumi #3 moored in Cow Bay on Saturday, afternoon, August 13th., 1949, at about 3:00p.m., with my husband. When we went aboard at that time Victor Johnson and his wife Jenny were aboard. We were with them in the wheel house most of the time. We were only there a few minutes because we had a taxi waiting. We left our baby with them while we done our shopping. We went up town and returned about 6 to 6:30p.m. When we went aboard this time Fred Savadra, his wife, Victor Johnson and his wife and Earl Johnson were in the galley. About fifteen or twenty minutes later a man named Fred and his wife came aboard and joined us, also Ida Webb and Calvin Webb. There was about a bottle and a half of rum on the galley table. All the people sat around the table in the galley. All the men had a drink. Jenny and I did not drink. I recall this because I was kidding her about me keeping her company. To which she replied, "you know I don't drink anyway." The baby was asleep when we first went aboard but woke up shortly after. Jenny and I went up to the wheel house to see how he was and he was awake. We went back to the galley and took the baby with us. As I went in the galley door, Earl took the baby and held him for awhile. We remained aboard the boat until about 8:30p.m. when we decided to try and catch the bus to go home. During the time we were aboard about a bottle of rum was consumed. It was not a case of drinking drink after drink because it was just a sociable party. It was a very friendly party and there were no arguments between anyone there. No one showed any outward signs of drinking and all seemed quite happy and talkative when we left. Ida and Calvin Webb left with us and the others remained aboard the boat. Earl, in the meantime had left the galley but I don't know where he went.

I remember a bottle of whiskey being produced and Earl offered Johnny a drink. Victor said something to the effect that the baby was his responsibility and he didn't want to drink while he was there.

(cont'd on page 2)

(STATEMENT of Mrs. Irene Godmaire, North Pacific Cannery, at present, or at Digby Island, Ed Wall's boat works.)

I know he hadn't drank very much. Earl is not as well known to me as Victor is so I can't say anything about him except that he had been drinking. I did not see Clifford Johnson, Mickey Dolan or Tony Silvey aboard the boat that night.

" Irene Godmaire "

AHT/JRW











56/49

Copy only

IN THE PROVINCE OF BRITISH COLUMBIA

IN THE COUNTY OF PRINCE RUPERT

IN THE CITY OF PRINCE RUPERT

IN THE MATTER OF:

Rex vs. Earl Johnson

CHARGED:

That he, the said Earl Johnson, on Saturday, August 13th, A. D. 1949, at the City of Prince Rupert, County of Prince Rupert, did unlawfully murder Vivian Charles James Johnson, contrary to the form of Statute in such case made and provided.

HOLDEN AT:

The City Police Court, Prince Rupert B. C., August 14th, 19th and 20th, A. D. 1949.

BEFORE:

Walter D. Vance, Esquire,
Police Magistrate.

For the Prosecution - Mr. T. W. Brown.

For the Defense - Mrs. M. Willa Ray.

Harold Dennis Thain,
Sworn Stenographer.

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August 15th, 1949. 10:30 o'clock a.m.

The Charge was read to the Accused.

No plea was taken.

The case was adjourned until Tuesday, August 23rd, 1949, or earlier by consent,

August 19th, 1949. 2:00 O'clock p. m.

Harold Dennis Thain duly SWORN as stenographer.

Mr. Brown: In this case, Your Worship, there was an adjournment from Monday last until Tuesday next, subject to the proviso that it might come up by consent in the interval. I take it that my Learned Friend consents to it proceeding now, at 2 p. m. August 19th, 1949?

Mrs. Ray: That is satisfactory to me, Your Worship.

Mr. Brown: And I take it that the reporter, Mr. H. D. Thain, produced by the Crown, is satisfactory to the defense?

Mrs. Ray: He is.

JOHN ALEXANDER MacDONALD,
having first been duly SWORN,
was examined by Mr. Brown,
and testified as follows:

1. Q: Dr. MacDonald, you are a properly qualified physician and surgeon, practicing your profession in the City of Prince Rupert under the "Medical Act" of the Province of British Columbia, and were such on August 13th and 14th of this year?

A: That's right.

2. Q: Were you, shortly after 10 p. m. on August 13th, called down to the waterfront in the City of Prince Rupert on to a seine boat type vessel, the

John Alexander MacDonald. Examination-in-Chief (Continued):

2. Q. (Cont'd): "Izumi III"?

A: Yes, sir.

3. Q: And did you there have occasion to make a pronouncement as to the absence of life of a body you looked at?

A: I did.

4. Q: Where did you find the body?

A: The body was in the engine room, in a sitting position on the fllor, slumped against the starboard side of the engine.

5. Q: In what condition?

A: He was dead.

6. Q: Was the body warm or cold?

A: It was warm. There was no rigor mortis.

7. Q: Was it the body of a person personally known to you?

A: No, it was not.

8. Q: Who gave you the name of that person?

A: Sergeant Potterton.

9. Q: Did you perform an autopsy on that body the following day, Sunday, August 14th, at the Prince Rupert City morgue?

A: Yes, at the B. C. Undertakers.

10. Q: Will you state your findings at that autopsy, using, if my Learned Friend has no objections, the notes you made at that time?

Mrs. Ray: I have no objections.

A: I performed a post mortem examination on a body identified as that of Vivian Charles James Johnson. The body was that of a well developed and well nourished male of about 38 years of age, of appar-

John Alexander MacDonald. Examination-in-Chief (Continued):

10. A. (Cont'd): ently negroid type, about six feet in height and 195 pounds weight. There was a small perforating wound in the anterior chest wall over the third rib, five and a half inches to the right of the mid line. No other marks of recent violence were found. There was a small healed scar on the point of the right shoulder, slightly to the front of the shoulder joint. On inserting a probe into the chest wound, the perforation was shown to be directed diagonally through the chest wall in a direction downward and toward the spine. Point of entry was immediately above the third rib, five and a half inches to the right of the mid line, and having nicked the upper edge of the third rib. On opening the body cavity the abdominal portion was free from blood and the organs therein, on gross examination, were normal. The right chest cavity was filled with blood, as also was the pericardial cavity. There was also some extravasation of bloody fluid in the right lung space. Examination of the organs of the chest revealed a perforating wound through the base of the upper lobe of the right lung and penetrating through the junction of middle and lower lobes, severing branches of both pulmonary vein and artery and cutting into the right auricle of the heart, passing into the chest wall posteriorly, having nicked the lower border of the eighth rib, three-quarters of an inch to the right of the spine. On following the perforation through, a portion of lead in the shape of a mushroomed 22-calibre bullet was removed from under the skin of the posterior chest wall just

John Alexander MacDonald. Examination-in-Chief (continued):

10. A. (Cont'd): below the level of the eighth rib and approximately in the mid line. A small area of old adherent pleura was found over the apex of the right lung, and, in the apex of the lung, tissue itself, a hard mass was observed. On opening into this mass a piece of metal in the form of a bullet of about 38 calibre was found. The metal was walled off from active lung tissue by a heavy fibrous capsule, indicating that it had been lodged in this position for a long period of time. Death was due to shock and haemorrhage. The 22 bullet removed from the back was handed to Sergeant Potterton immediately on recovery. The larger bullet was handed to Constable Gibson immediately following recovery.

11. Q: You were handed two envelopes just before you entered the Court, were you not, doctor?

A: That's right.

12. Q: Will you produce them please, and tell us what they contain?

A: These envelopes were sealed in my presence and one contains a 22 calibre bullet and the other a 38 calibre bullet.

(Envelope said to contain 22 calibre bullet marked "A" for Identification)

(Envelope said to contain 38 calibre bullet marked "B" for Identification)

13. Q: Which one of those bullets caused death?

A: The 22 calibre bullet.

14 Q: Had the 38 calibre bullet anything at all to do with the death?

A: Nothing whatsoever. It had been there for a long

John Alexander MacDonald. Examination-in-Chief (continued):

14. A. (Cont'd): period of time.

15. Q: Who was present when you performed that autopsy?

A: Sergeant Potterton, Constable Gibson and Mr. Van Meer.

16. Q: Mr. Van Meer, the photographer?

A: Yes.

17. Q: Were you present when Mr. Van Meer took some pictures of the body?

A: I was.

18. Q: I show you in turn five pictures. The first picture portrays the right profile of the head and upper torso of what appears to be a dead human. Does that accurately portray the body as you saw it at the time of the autopsy and at the time you saw the pictures taken by Mr. Van Meer?

A: Yes, it does.

19. Q: Showing a black mark above the right nipple?

A: Yes.

20. Q: What is that mark?

A: That is the point of entry.

21. Q: Of the bullet which resulted in his death?

A: Yes.

22. Q: I show you another picture taken from approximately the same angle, and showing about the same portion of the body. Is that the same man and was that taken at the same time as the first one?

A: It is.

23. Q: What is that instrument protruding from the wound?

A: It is a form of probe to show the angle of the wound.

John Alexander MacDonald. Examination-in-Chief (continued).

24. Q: Does it show the course that the bullet took in the body?

A: Yes.

25. Q: I show you another picture, doctor. Does that represent the same person and was it taken under the same circumstances?

A: Yes.

26. Q: Is that instrument protruding from the body a probe?

A: Yes.

27. Q: Was that taken with the dead man facing the camera in a reclining position?

A: Yes.

28. Q: Does the probe show accurately the course of the bullet with reference to the body?

A: It does.

29. Q: I show you a further picture, with the probe protruding from the wound, taken at very close range. What is that?

A: It is just another picture of the same body taken from a closer distance.

30. Q: I show you a further picture of the right upper profile and shoulder. Is that also of the same person and taken under the same circumstances?

A: It is.

31. Q: Is there any significance to the darkened circle on the shoulder?

A: That is the healed scar mentioned in the autopsy report. I marked it with ink to show the location.

32. Q: Does the death-causing wound also show on that

John Alexander MacDonald. Examination-in-Chief (continued):

32. Q. (Cont'd): picture?

A: Yes.

(Five photographs marked Exhibit "C", "D", "E", "F" and "G" for Identification.)

33. Q: Did you have occasion to attend professionally this Accused on the evening of Saturday, August 13th?

A: I did.

34. Q: Where?

A: In the police station.

35. Q: What services did you perform for him?

A: I fixed up a cut on his left arm below the shoulder. I closed it with three clamps.

36. Q: Will you describe the cut please?

A: It was a clean cut just above the middle of the upper arm on the left side in the lateral quarter. It was cut through and the skin was gaping, but it did not cut the muscle. I cleaned it antiseptically and closed it with three suture clips.

37. Q: Did you attend him subsequently?

A: Yes, I removed the clips yesterday.

38. Q: Was the healing normal?

A: Yes, quite satisfactory.

39. Q: Did you attend any member of the police force the same evening?

A: Yes.

40. Q: Who?

A: Corporal Taylor.

41. Q: What did you do for him?

A: I dressed a small cut on the fifth finger of his

John Alexander MacDonald. Examination-in-Chief (continued):

41. A. (Cont'd): left hand.

42. Q: Corporal Taylor's left hand?

A: Yes.

43. Q: Did you notice the condition of the Accused when you attended him professionally?

A: Not particularly. He was sitting in a chair when I attended him, and as I remember it he was holding his head in his hands. He seemed to be certainly upset.

44. Q: I mean his condition as to sobriety?

A: I wouldnt say, no. It seemed possible that he might have been under the influence of alcohol.

45. Q: From what would you deduce that?

A: There was some odour of alcohol and some moderate degree of lack of co-operation while I was attending to his wound.

46. Q: Did you notice any other injury whatsoever, beyond the cut on the arm which you attended?

A: No.

47. Q: Who called you to attend to him?

A: I couldnt say.

48. Q: Did the Accused call you, or did the police call you?

A: The police.

Mrs. Ray: No questions.

ROBERT BAIRD GILMORE, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

49. Q: What is your full name?

Robert Baird Gilmore. Examination-in-Chief (Continued):

49. A: Robert Baird Gilmore.

50. Q: What is your occupation, Mr. Gilmore?

A: At present I am a salesman.

51. Q: What experience have you had with the construction and sketching of vessels?

A: Five years at the Prince Rupert Dry Dock and Shipyard.

52. Q: What was your occupation there?

A: Senior draughtsman.

53. Q: Did you, on instructions of Corporal Taylor and of me, on Sunday August 14th take certain measurements of a vessel tied up at the Standard Oil Dock in Prince Rupert Harbour, and known as the "Izumi III".

A: Yes.

54. Q: And after you had taken the measurements, did you make drawings from them?

A: I did.

55. Q: Were they to scale?

A: Yes, one inch to the foot.

56. Q: I show you a piece of brown paper with two drawings on it. Will you state what the upper drawing represents?

A: It shows the elevation of the forecastle.

57. Q: Of what vessel?

A: The "Izumi III".

58. Q: And the lower drawing is what?

A: It is a general arrangement plan of the "Izumi III".

59. Q: Showing the forecastle and the galley?

A: Yes.

60. Q: Is that also drawn to a scale of one inch to the

Robert Baird Gilmore. Examination-in-Chief (Continued):

60. Q. (Cont'd): foot?

A: Yes.

(Drawing marked "Exhibit '1'").

61. Q: What is the proper way to refer to that stairway running from the engine room to the fo recastle?

A: The engine room ladder.

62. Q: And what is the term for the space between the engine and the starboard side of the forecastle?

A: The alleyway.

63. Q: Will you state what is on this second drawing, please?

A: This drawing here is - -

64. Q: Will you refer to them as the upper drawing and the lower drawing, please?

A: The lower drawing is the elevation of the pilot house and galley. The upper plan is a view of the top of the galley and the top of the pilot house.

65. Q: What type of vessel is the "Izumi III"?

A: A seiner.

66. Q: What is the topmost part of the vessel usually known as, the top of the pilot house?

A: It is sometimes called "Monkey Island", but it is not usually referred to as that.

67. Q: What is it usually known as?

A: The pilot house top.

(Sheet of paper with two drawings marked "Exhibit '2').

Robert Baird Gilmore. Examination-in-Chief (Continued):

68. Q: Is Exhibit "2" also drawn to a scale of one inch to the foot?

A: Yes.

Mrs. Ray: No questions.

ALMER VAN MEER, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

69. Q: What is your full name?

A: Almer Van Meer.

70. Q: Mr. Van Meer, you are a photographer carrying on business as such in the City of Prince Rupert?

A: I am.

71. Q: And on Sunday afternoon last, August 14th, did you attend an autopsy on the body of a person identified to you as Victor Johnson in company with Sergeant Potterton of the Prince Rupert City Detachment of the Provincial Police?

A: I did.

72. Q: And did you, under the direction of Sergeant Potterton take certain pictures?

A: Yes, I did.

73. Q: Were they accurate representations of what they purported to portray?

A: I believe so, yes.

74. Q: I am showing you five pictures marked in this case for identification as Exhibits "C", "D", "E", "F" and "G" and ask you to look at them each separately and tell me if those are in fact the pictures you took that day at the city morgue. It was at the

Almer Van Meer. Examination-in-Chief (Continued):

74. Q. (Cont'd): city morgue, was it?

A: Yes, at the undertaking parlour.

75. Q: Were all these pictures taken by you?

A: Yes.

76. Q: Who developed the films?

A: I did myself.

77. Q: And who completed the printing?

A: I did. I enlarged them myself.

Mr. Brown: I tender these exhibits, now marked "C" to "G" respectively as Exhibits "3" to "7" respectively, "C" will be "3", "D" will be "4" and so on up to "7" now that they have been proven.

(Five pictures marked as Exhibits "3", "4", "5", "6" and "7".)

Examination resumed:

78. Q: Did you see a lead bullet taken from the body at that autopsy?

A: Yes, I saw that.

79. Q: And given by the Doctor to whom?

A: Sergeant Potterton.

Mrs. Ray: No questions.

ARCHIBALD HAWTHORNE TAYLOR, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

80. Q: What is your full name?

A: Archibald Hawthorne Taylor.

81. Q: Your occupation?

A: Corporal, British Columbia Provincial Police, stationed at the City of Prince Rupert, County of

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

81. A. (Cont'd): Prince Rupert, Province of British Columbia.

82. Q: Corporal Taylor, did you on Saturday evening last go to the Standard Oil Dock in the City of Prince Rupert?

A: I did.

83. Q: In company with who?

A: Constable Gurr and Special Constable Gibson of this detachment.

84. Q: As the result of information received by radio or telephone?

A: Telephone.

85. Q: Was the voice that of a woman or a man?

A: A woman.

86. Q: What did you do before leaving the police station?

A: I phoned to Dr. MacDonald and I left instructions to contact Sergeant Potterton.

87. Q: Where did your mission lead you to?

A: We went to the Standard Oil Dock at Cow Bay, which is in the City of Prince Rupert, County of Prince Rupert, Province of British Columbia. We were joined there by Dr. MacDonald and we proceeded out to the end of the dock where we were met by a woman.

88. Q: Now known to you as what?

A: Mrs. Vic Johnson, Mrs. Janet Johnson.

89. Q: She took you where?

A: She led us down to the ramp of the float and across a boat known to me as the "Advance II" and she took us to a boat known as the "Izumi III". From there

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

89. A. (Cont'd): we went through a doorway into what is known as the galley of the boat.

90. Q: That is of the "Izumi III"?

A: Yes.

91. Q: Who was in the galley of the "Izumi III" when you got there?

A: Anthony Silvey.

92. Q: What was his condition?

A: He appeared to me to be intoxicated.

93. Q: To what extent was he awake?

A: He appeared to me to be sleeping.

94. Q: Is the forecastle of that vessel visible from the galley?

A: Yes.

95. Q: And what did you see in the forecastle as you looked from the galley?

A: I looked down into the forecastle and I saw a man in a sitting position apparently lifeless.

96. Q: Is the entrance to the forecastle from the galley on the port or starboard side of the vessel?

A: The Starboard side.

97. Q: Where was this man who was apparently lifeless?

A: His back was against the engine and his feet were pointing towards the starboard side of the vessel

98. Q: Was he on the starboard side of the engine?

A: Yes.

99. Q: Did you enter the forecastle?

A: I did.

100. Q: Who preceeded you, if anyone?

A: Mrs. Johnson.

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

101. Q: What took place as you and she entered the forecastle?

A: She led the way down to the forecastle, and headed towards the bow of the boat. There were two men in the forecastle.

102. Q: Two live men in addition to the lifeless one?

A: Yes, and I saw a pair of feet disappear upwards through a skylight. We passed over the man, that is the alleged dead man -

103. Q: Who was in fact whom?

A: Victor Johnson.

104. Yes?

A: And we went into the forward part of the boat. Mrs. Johnson was carrying something in her hand, I did not know what at that time. She went up to the Accused and struck him. I tried to ward the blow off, but she actually struck him on the left upper arm.

105. Q: Did you see what the Accused did as a consequence of receiving that blow?

A: Yes, he grabbed his arm where she had struck him.

106. Q: Were you then in a position to see what Mrs. Johnson was carrying?

A: I grabbed her and I saw what the object was. Mickey Dolan and I extracted a hatchet from the hand of Mrs. Johnson.

107. Q: I show you a hatchet or a small axe. What have you to say as to that?

A: That is the hatchet that I took from Mrs. Johnson.

108. Q: It is the hatchet with which she struck the

Archibald Hawthorne Taylor, Examination-in-Chief (Cont'd)

108. Q. (Cont'd): Accused and which you then took from her?

A: It is.

(Hatchet marked "Exhibit '8'").

109. Q: Following that, what conversation ensued?

A: Following that Dr. MacDonald was attending to the deceased, Victor Johnson and he pronounced him dead at approximately 10:25 p. m. on the night in question, August 13th, 1949. I then enquired as to who had done the shooting, and was then informed by Mrs. Johnson that the Accused had shot him.

110. Q: How far was she away from him at that time?

A: She was about six feet away from him and I was about three feet away from him.

111. Q: Did the Accused hear her say that?

A: He should have.

112. Q: What did you do then?

A: I told him that he was under arrest and I put the handcuffs on him.

113. Q: What was the condition of the Accused at that time?

A: He was very intoxicated.

114. Q: What was the condition of Mickey Dolan?

A: He also appeared to be intoxicated.

115. Q: Was anyone else present there besides the Accused, Mrs. Johnson, Mickey Dolan, the doctor, the constable and yourself?

A: Victor Johnson.

116. Q: I am speaking of those alive?

Archibald Hawthorne Taylor. Examination- in-Chief (Cont'd):

116. A: No, that's all.

117. Q: Where did Constable Gibson remain when you went forward in the forecastle?

A: With the body and Dr. MacDonald.

118. Q: Did you notice anything about the body?

A: In passing over the body I noticed a knife lying on the floor between the legs of the deceased. I instructed Constable Gibson to pick it up and give it to me.

119. Q: Did he do that?

A: He did.

120. Q: I show you a knife. What have you to say as to that?

A: This is the knife that Constable Gibson picked up and gave to me.

(Knife marked "Exhibit '9'").

121. Q: What other instruments did you notice innthe forecastle?

A: On the lower part of a bunk in the forecastle I found a 22-calibre rifle, Cooey make, a single shot model number 78.

122. Q: I show you a rifle. Is this the rifle you found there?

A: Yes. When I examined the rifle I found the breach open.

123. Q: In a position for reloading?

A: Yes.

124. Q: And was it empty?

A: Yes.

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

125. Q: Is the breach now in the same position as it was when you found it?

A: Yes.

(Rifle marked "Exhibit '10'").

126. Q: How old a rifle would you say it is?

A: I have no idea.

127. Q: Is it in good condition?

A: It is rusty on the outside but it is in good condition, it is in working order.

128. Q: What else did you find in that forecastle?

A: I went from there to the car and took the exhibits, the knife, the gun and the hatchet with me and locked them in the police car and radioed the office and left instructions to have the coroner notified.

129. Q: Did you return to the "Izumi III"?

A: Yes, I returned again and went into the forecastle and made a search of the forecastle and I found a live 22-calibre cartridge.

130. Q: Where?

A: On the floor of the forecastle, immediately below the bunk on which the gun had been lying.

131. Q: That was the forward port bunk?

A: Yes.

132. Q: Is the cartridge that you are producing, the one you refer to?

A: Yes.

133. Q: What is that?

A: A 22-calibre, what they call "Long Rifle" cart-

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

133. A. (Cont'd): ridge.

134. Q: Do you know enough about guns to know if this cartridge is usable in the last exhibit?

A: Yes, it is.

(Cartridge marked "Exhibit '11'").

135. Q: Did you find anything else?

A: I also found a 22-calibre cartridge casing on the floor of the forecastle almost in the apex of the port and starboard bunks.

136. Q: Will you produce it please?

A: This is it.

137. Q: This is the casing you picked up in the forecastle?

A: Yes, it is a 22-calibre cartridge casing.

138. Q: Of such calibre or size as would be used in Exhibit "10"?

A: Yes.

(Cartridge casing marked "Exhibit '12'").

139. Q: There was nothing in the rifle when you found it, neither exploded nor unexploded?

A: No, it was empty and the breach was open.

140. Q: These cartidges have been in your possession since then?

A: Ever since, yes.

141. Q: Following that, who arrived?

A: Coroner Stephens and Sergeant Potterton.

142. Q: Then what happened?

A: After Coroner Stephens made his investigation he

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

142. A. (Cont'd): ordered the body moved and I was instructed to bring the Accused to the office.

143. Q: Which you did?

A: Yes, in company with Constable Gibson.

144. Q: Was the Accused searched after he was taken to the police office?

A: Yes, and stripped to the waist.

145. Q: What wounds were found on him?

A: We found a horizontal wound on his left upper arm, approximately an inchand a half in length.

146. Q: No other wound?

A: None whatever.

147. Q: Were you present when that wound was inflicted on him?

A: Yes.

148. Q: Then what did you do?

A: I called Dr. MacDonald, who came and put clamps on the wound.

149. Q: Yes?

A: Prior to the search and the location of the wound I informed the Accused that he was under arrest charged with murder, and gave him the statutory warning.

150. Q: Did he say anything?

A: He said absolutely nothing.

151. Q: Did you see Clifford Johnson that night?

A: Yes, he came to the office while we were searching the Accused.

152. Q: What was his condition?

A: He was very intoxicated.

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

153. Q: What was the condition of Mrs. Janet Johnson, Mrs. Victor Johnson, when you got to the boat?

A: Apparently absolutely sober, apart from being excited.

154. Q: Did her excitement persist?

A: No, after I took the axe away from her she cooled right down. As a matter of fact she phoned several people after that.

155. Q: In your presence?

A: No, but I could hear her phoning upstairs.

156. Q: What else did you do in connection with your investigation?

A: About 2:15 a. m. on Sunday, August 14th, in company with Sergeant Potterton I went to the undertaking parlour and removed several articles of clothing from the body of Victor Johnson.

157. Q: Will you describe them please?

A: There was a brown coat, a green zippered sweater, a dress shirt and a tie.

158. Q: In which, if any, of these articles was there any indication of the passage of a bullet?

A: In the sweater jacket and the shirt.

159. Q: Will you produce the shirt please?

(Done)

160. Q: Has this been in your possession ever since?

A: Yes.

161. Q: Will you describe it please?

A: Here in front there is a blood stain on the right breast.

(Shirt marked "Exhibit '13'").

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

162. Q: Any other garment?

A: There is also a small hole on the right breast of this sweater.

163. Q: Is that the sweater and the shirt that were on the body when you first saw him?

A: Yes, so was the overcoat.

(Sweater marked "Exhibit '14'").

164. Q: There is no bullet hole in the coat?

A: None visible that I can see. Yes there is. This appears to be a bullet hole.

165. Q: With powder marks?

A: Yes, it looks like it.

(Coat marked "Exhibit '15'").

166. Q: That is the coat which you, in the presence of Sergeant Potterton, removed from the corpse of the deceased on the early morning of August 14th?

A: Yes.

167. Q: And this tie also?

A: Yes.

(Tie marked "Exhibit '16'").

168. Q: Were you present with Sergeant Potterton on the morning of August 14th in his office in the Prince Rupert City Police Station immediately before the hour of eleven o'clock?

A: I was.

169. Q: Was this Accused brought in to you?

A: Yes.

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

170. Q: What took place?

A: I read him the statutory warning.

171. Q: Will you read it to us in the exact words that you read it to him?

A: Yes.

172. Q: Are you reading from the same book and from the same place in that book?

A: Yes. I first told him he was charged with murder. I then read the statutory warning to him - "You have heard the charge. Do you wish to say anything in answer to the charge. You are not bound to say anything, but whatever you say will be given in evidence at your trial. You must clearly understand that you have nothing to hope from any promise or favour, and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence at your trial notwithstanding such promise or threat."

173. Q: In what condition was the Accused at that time?

A: The Accused was absolutely sober.

174. Q: To what extent did he appear to understand and comprehend the warning?

A: I asked him if he understood it, and he said he did.

175. Q: Then what took place?

A: Sergeant Potterton asked him why he shot his brother and he replied "I shot him in self-defense after he slashed my arm with a knife".

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

176. Q: Did Dolan come to the police station at or about the same time as you came up from the boat?

A: Shortly afterwards.

177. Q: Was he marked in any way to indicate a recent injury?

A: No.

178. Q: Did you see Clifford Johnson about that time?

A: Yes.

179. Q: Did he bear any marks that would indicate a recent injury?

A: There were two little marks on his forehead.

180. Q: Who pointed out the "Izumi III" and identified it as a boat to be measured to Mr. Gilmore, what two people did that?

A: Yourself and myself.

181. Q: And was that the same vessel on which you had been the night before and found the dead man and made the observations you have mentioned?

A: Yes, that was the same ship.

182. Q: Who was present with you when the Accused was stripped and searched in the police station in this building on the evening of the 13th?

A: Special Constable Gibson.

183. Q: On that vessel, how many entrances to the galley are there?

A: One.

184. On the port side or the starboard side?

A: The starboard side.

185. Q: On that vessel, apart from the skylight, how many entranes are there to the forecastle?

A: One - from the galley.

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

186. Q: Port or starboard?

A: Starboard.

187. Q: How far is that from the door leading to the outside?

A: Just a matter of two or three feet.

188. Q: What evidence, if any, did you find on the vessel of recent drinking?

A: There were some emty bottles in the forecastle.

189. Q: Of what type?

A: There was one empty "Thoroughbred" Rye Whiskey bottle and two or three empty beer bottles.

190. Q: Did you find any liquor on your way to the vessel?

A: Yes, there were two cases of beer on the deck on the starboard side of the "AdvanceII".

191. Q: That is the deck nearest the "Izumi III"?

A: Yes, that's right.

Cross-examination, by Mrs. Ray:

192. Q: Corporal Taylor, when you first went on the boat with Mrs. Johnson, and just prior to her swinging the axe at the Accused, did you at that time examine the Accused at all?

A: No.

193. Q: Did you examine him after she swung the axe?

A: No.

194. Q: Your first examination was in the police station here?

A: Yes.

Re-direct examination, by Mr. Brown:

Archibald Hawthorne Taylor. Re-direct examination:

195. Q: When did you first see blood on the arm of the Accused?

A: In the police office.

JANET STUART JOHNSON, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

196. Q: What is your full name?

A: Janet Stuart Johnson.

197. Q: You are the common law wife of the man known as Vic Johnson?

A: Yes.

198. Q: What actually is his full name?

A: Vivian Charles James Johnson.

199. Q: How long have you been his wife?

A: Since 1943.

200. Q: Were you present when he died last Saturday night, August 13th?

A: Yes.

201. Q: Were you present when the shot was fired?

A: Yes.

202. Q: That shot was fired a short time before he died?

A: Yes.

203. Q: Where did that take place?

A: Aboard the ship "Izumi III".

204. Q: Who else was present on that vessel when your husband died?

A: His brothers, his two brothers.

205. Q: There names, please?

A: Clifford Johnson and Earl Johnson.

206. Q: Is Earl Johnson in this Court?

Janet Stuart Johnson. Examination-in-Chief (continued):

206. A: Yes.

207. Q: Is he the Accused, who is standing back of me and to my left?

A: Yes.

208. Q: Who else was there?

A: Earl and Clifford and a boy off the "London III", I do not know his name, and myself. The four of us.

209. Q: Who else?

A: Earl, Clifford, the boy from the other ship, and his brother-in-law.

210. Q: What is his name?

A: Mickey Dolan, and myself.

211. Q: Had Earl, the Accused, been aboard ship most of that evening?

A: After supper, between 6 and 6:30 he came aboard.

212. Q: And from then until the time of your husband's death, did he remain on board?

A: Yes.

213. Q: Were there others present from supper until about ten o'clock?

A: Yes.

214. Q: Had the others, apart from those you have mentioned as being aboard, gone away at the time that the killing took place?

A: Yes, everyone had left except those I mentioned as being there at the time.

215. Q: What had been happening between your husband and the Accused throughout that evening?

A: They were arguing, but not seriously.

216. Q: Did they come to blows at any time?

Janet Stuart Johnson. Examination-in-Chief (Continued):

216. A: No.

217. Q: After those you mentioned left, who was left aboard the ship? That is at the time the fewest were there?

A: There was the skipper of the "London III" and his wife.

218. Q: But they left?

A: Yes.

219. Q: When the fewest number remained on board, how many were there?

A: Just ourselves, the two brothers and the brother-in-law.

220. Q: Before the brother-in-law came aboard and after the others had left, who was there on board then?

A: Just Earl, my husband and myself.

211. Q: What time would that be?

A: That would be just before ten o'clock.

212. Q: Did you have anything to drink that evening?

A: No.

213. Q: Did your husband?

A: Yes.

214. Q: What, in your presence?

A: Hot rum.

215. Q: With whom?

A: There were many people there,

216. Q: Did the Accused have anything to drink aboard that evening?

A: Yes.

217. Q: What, in your presence?

A: Whiskey.

Janet Stuart Johnson. Examination-in-Chief (Continued):

218. Q: How much, in your presence?

A: I was not looking at what he poured.

219. Q: After the others left and there were just the three of you there, Earl, your husband and yourself, what was the relationship between your husband and Earl at that time?

A: Just quarelling.

220. Q: In what condition were they?

A: They were drinking, they had been drinking, but there was no liquor after the others left.

221. Q: In what condition was Earl when there were just the three of you aboard?

A: Reasonably sober I would say.

222. Q: What happened towards ten O'clock when there were just the three of you aboard?

A: Nothing except just quarelling and threats back and forth.

223. Q: Who else came aboard?

A: We were just leaving to go up town - -

224. Q: Who was?

A: My husband and I.

225. Q: Yes?

A: We were just going when Cliff, Mickey and the boy from the "London III" came aboard.

226. Q: Would that person you refer to as "the boy from the 'London III'" be Tony Silvey?

A: Yes.

227. Q: Is that man who has just stepped in at the door the man you refer to as being from the "London III"?

A: Yes.

Janet Stuart Johnson. Examination-in-Chief (continued):

228. Q: These three came aboard when you and your husband were about to leave?

A: Yes.

229. Q: Was Earl going to leave with you?

A: No.

230. Q: What was he going to do?

A: I was just going to lock the galley door when he said he was not going up town, so I put the key on the galley table.

231. Q: Leaving him in charge of the boat?

A: Yes.

232. Q: How was your husband dressed?

A: He wore grey slack trousers, a wine coloured tie, I do not know what colour his shirt was but it was striped, a green sweater and a brown overcoat.

233. Q: What happened as you were leaving?

A: Just as we turned to leave, that's when the others came.

234. Q: What took place between them and your husband?

A: My husband said to take the liquor off the ship, that he was not going to have any liqour on board.

235. Q: What liquor?

A: They had some cases of beer under their arms. I do not think they took him seriously as they took it towards the galley. He told them again. He said "I mean this. There is to be no liquor aboard". Cliff had some parcels in his arms and he went in to the galley. I do not know what the others were doing then. You have to go into the

Janet Stuart Johnson. Examination-in-Chief (Continued):

235. A. (Cont'd): galley to go down to the forecastle. Cliff went in and down to the forecastle. Earl stepped in. My husband was on deck. As Earl started to go down through the galley he took the 22 from by the exhaust.

236. Q: By the exhaust?

A: Yes, as he turned round to back down the forecastle steps. I stepped in and grabbed the 22 and told him "Give me that gun".

237. Q: Did you know if it was empty or loaded at that time?

A: It was empty.

238. Q: To your knowledge?

A: Yes.

239. Q: Then what happened?

A: I started to try and get the gun away from him, but my husband told me to keep out of it, he would handle it himself. He went down to the forecastle. Mickey Dolan and Tony stayed on deck. Mickey wanted to go down into the forecastle, but I said "No". He said he thought he could stop the quarrel so I let him go. Then they started arguing and my husband ordered them off the ship. He told Earl he did not have to go.

240. Q: Were the Accused and your husband's brother, Clifford, crew members?

A: Yes.

241. Q: Was Mickey Dolan a crew member?

A: No.

242. Q: Was Tony Silvey a crew member?

A: No.

Janet Stuart Johnson. Examination-in-Chief (Continued):

243. Q: The order your husband gave, telling him to get off the ship, was he firing him or was it just temporary?

A: He was firing Clifford, but not Earl.

244. Q: What happened then?

A: There was Clifford and Earl. Earl said he was going with him. Vic said "If that's the way you feel, pack your bags and go too. They both started to pack. While they were packing my husband came up to me and then went back down to the forecastle while they were packing.

245. Q: Did they ever finish packing?

A: I think so, most of their things anyway, may be there were some little things left.

246. Q: Yes?

A: Then they were having a drink.

247. Q: Where?

A: In the forecastle.

248. Q: Is that what caused your husband to go down the second time?

A: No.

249. Q: He was not drinking?

A: No.

250. Q: After he went down the second time, what took place?

A: There was arguments and quarrelling, accusations and threats flying back and forth. Then Earl passed me and went out. I thought he was getting away from the quarrel. Then I saw that he went up to the top of the wheel house.

Janet Stuart Johnson. Examination-in-Chief (Continued):

251. Q: What is kept up there?

A: The bullets are kept up there, under the megaphone.

252. Q: That is the radio-telegraph?

A: Yes.

253. Q: Then what happened?

A: He went up there, and when he came down I grabbed his hand.

254. Q: Was that inside the galley or outside?

A: Just outside the galley door. I stepped out when I saw him go up.

255. Q: What did you feel when you grabbed his hand?

A: Bullets.

256. Yes?

A: I grabbed his hands and told him to give me the bullets. He reached his hand away from me and over the side of the ship. There was another ship tied up there. I thought they dropped between the ships. After that he went back down the forecastle.

257. Q: Where was Mickey Dolan at this time?

A: Down in the forecastle.

258. Q: Where was Clifford Johnson?

A: Down in the forecastle.

259. Q: Then what happened?

A: Then they picked up the quarrel again. My husband said "I know you all want to have me, come on and take me. Come on and fight". Then my husband raised his fists and said "The three of you come on the deck and fight me with these".

Janet Stuart Johnson. Examination-in-Chief (Continued):

260. Q: Meaning to fight with their fists?

A: Yes.

261. Q: Where were you at this time?

A: There is a stairway to the forecastle which goes down from the galley. I was kneeling at the top of it, looking down.

262. Q: Who was closest to the galley in the forecastle?

A: My husband.

263. Q: Yes?

A: The boy from the "London III" went down there. I thought to try and avert the quarrel.

264. Q: That is Tony Silvey?

A: Yes.

265. Q: What did he do down there? When did he come back up?

A: He went down and he came back with a pair of gum boots and a shaving kit.

266. Q: Do you know to whom they belonged?

A: I think the boots were Earl's, I do not know about the shaving kit.

267. Q: Was he only there a short time?

A: Yes. He had an argument with Vic. Vic siaid "There are the three of you, and Tony here will side me".

268. Q: Could the Accused hear that?

A: Yes.

269. Q: Yes?

A: He said "Tony will side me" and Tony said "Not me. I am neutral. Let me out of here". Vic said he was not going to let him past. He said he might jump him from the back. He said "Not me, I never jumped anybody from the back in my

Janet Stuart Johnson. Examination-in-Chief (continued):

269. A. (Cont'd): life! Then he said "It is not my nature to jump people from the back". I said he could sit in the galley.

270. Q: Could the Accused hear that?

A: He could if he was paying attention.

271. Q: What happened next?

A: Tony came up and sat on a bench beside the galley table by the galley door. The quarrel continued. Mickey Dolan was pulling my husband to the side from where he was sitting. He had a hold of his coat. My husband kept asking him to let him go. I think he wanted to try and take the gun from Earl.

272. Q: Did Earl have the gun in his hands at this time?

A: Yes, but it was not loaded.

273. Q: Then what happened?

A: While Mickey was pulling at my husband, Earl loaded the gun.

274. Q: Do you know how to llad the gun yourself?

A: Yes.

275. Q: Have you had occasion to shoot seals and tin cans with it?

A: Yes.

276. Q: And you know how to load it?

A: Yes.

277. Q: I show you a rifle marked "Exhibit '10'". Is this the gun you refer to. Can you identify it?

A: Yes, by the sight here.

278. Q: And that is the gun which your brother-in-law was handling, and which you now say he loaded?

Janet Stuart Johnson. Examination-in-Chief (Continued):

278. A: Yes.

279. Q: Then what happened?

A: Earl loaded the gun. He just held it in his hands and the quarrel kept on. When Earl loaded the gun Vic reached out and there was a knife in his hand. He said "O. K. If you are going to fight that way you force me to fight this way too". Mickey started pulling on him again. He said "Mickey get out of the way. You dont want me to use this on you, do you?". Mickey was pulling on his coat, and he was trying to get away. While they were doing that Earl fired.

280. Q: Had there been any physical violence among any of them before that shot was fired?

A: No, only when my husband was pushing Mickey away.

281. Q: I show you a clasp knife, marked "Exhibit '9'" in this case. Do you recognize it?

A: Yes.

282. Q: What is it?

A: That is the knife my husband was holding.

283. Q: Will you look at the blade and tell me what you know about these tiny notches in the blade?

A: That is the knife they use to cut the net and they also use it when they are fixing the engine.

284. Q: Had you seen it used that day?

A: Yes.

285. Q: Where?

A: In the engine room

286. Q: What was it used for there?

Janet Stuart Johnson. Examination-in-Chief (Continued):

286. A: Fixing generators.

287. Q: What was the knife actually used for?

A: Cutting wires.

288. Q: Does that account for the notches?

A: Yes, cutting metal.

289. Q: Where was he working when he was using it?

A: In the engine room in the forecastle.

290. Q: In the vicinity of where he picked it up that night?

A: Yes, it was on the work bench right beside where he was standing.

291. Q: He could just reach over and get it?

A: Yes.

292. Q: When you saw Earl fire the shot, what took place?

A: He slumped back against the engine.

293. Who did?

A: My husband.

294. Q: He was closest to you at that time?

A: Yes.

295. Q: He was the closest in the galley?

A: Yes.

296. Q: Then what happened?

A: As soon as Earl fired I ran down into the forecastle. I took hold of my husband, and I asked him if they had hurt him. He had his hands up on his chest like this, and he looked up at me and said "Baby, look what my brothers have done to me", and then - -

297. Q: Was he still standing then?

Janet Stuart Johnson. Examination-in-Chief (Continued):

297. A: He was sliding down against the engine. He was still up but he was sliding back. As I went down into the forecastle I picked the axe up.

298. Q: I show you an axe, marked "Exhibit '8'". Do you recognize it?

A: Yes.

299. Q: Is that the axe you refer to?

A: Yes.

300. Q: What did you do with that axe?

A: I picked it up and went down into the forecastle. When my husband spoke to me I ran towards Earl with the axe. He backed up into where the bunks make a "V" shape.

301. Q: That is the extreme forward part of the forecastle?

A: Yes, and he said he would shoot me, too. I said he would have to load first.

302. Q: You knew it was a single shot rifle?

A: Yes.

303. Q: Then what happened?

A: Tony stopped me. He grabbed me from behind. Then I went up to the wheelhouse. I wanted to use the phone, but I didnt seem to be able to work it right.

304. Q: Did your husband touch this Accused, Earl, that night?

A: No.

305. Q: Did he use any violence whatsoever?

A: No.

306. Q: Either with his hand, with his fists, the knife or any other weapon?

Janet Stuart Johnson. Examination-in-Chief (Continued):

306. A: No.

307. Q: You have stated that your husband said that his brothers had done that to him when he was dying. How long after that approximately did your husband die?

A: I dont know. I was not there.

308. Q: Did he die quickly, or was it a long time after he said that?

A: I would say he was dying as he slumped down.

309. Q: Was there any sign of life after that?

A: No.

310. Q: (By the Magistrate): Was he down when he said that?

A: He was sliding down and he slid until he hit the floor. He was in the same position when I came back.

Examination by Mr. Brown resumed:

311. Q: He had not moved by the time you returned?

A: No.

312. Q: Did you hear either Earl or your husband threaten eachother that night?

A: Yes, but they were always threatening eachother.

313. Q: What specific threats did you hear?

A: My husband sais just before he went down there, he said "I know you bastards want me." He said "I am here. Take me". Earl said "I dont want you now, but my day will come".

314. Q: Did you call the police?

A: Yes.

Janet Stuart Johnson. Examination-in-Chief (Continued):

315. Q: Do you remember Corporal Taylor of the Provincial Police coming to the vessel?

A: I did not know who he was then.

316. Q: Do you remember what you did when he first came aboard?

A: Yes.

317. Q: What did you do?

A: I went down to the forecastle and hit Earl with the axe.

318. Q: Where?

A: On the arm.

319. Q: Who took the axe away from you?

A: Corporal Taylor.

320. Q: Did you see Earl, the Accused, struck any other blow by anyone that night, except the blow you struck him with the axe?

A: No.

321. Q: In what condition was Clifford Johnson at that time?

A: Drunk.

322. Q: And Mickey Dolan?

A: Drunk.

323. Q: And Tony Silvey?

A: Drunk.

324. Q: Can you distinguish between their degrees of drunkeness. Was any one of them more drunk than the others?

A: No, I wouldnt say so. None that you could judge. Tony was quiet.

325. Q: Did you use the axe on anyone else that night in

Janet Stuart Johnson. Examination-in-Chief (Continued):

325. Q. (Cont'd): any way, either with the blade or in any other way?

A: Yes.

326. Q: What did you do?

A: I hit Cliff.

327. Q: Before or after the shooting?

A: After.

328. Q: Where was he going or what was he doing when you hit him?

A: I was in the wheelhouse and I was trying to use the ship's phone to make a call. I had put the axe beside the door. I could not seem to remember how to use the dials so I went over to the Standard Oil and used the phone there. Cliff was coming from the top of the wheelhouse. I was afraid he had gone up there to get some more bullets. I said "Dont you dare go in to the galley" and I swung at him with the axe. I did not hit him because Tony grabbed me at the door. I leaned inside the galley door and I hit him with the side of the axe on the front of his head.

329. Q: This all took place after the shooting?

A: Yes, then I ran to the phone.

330. Q: Where was the rifle ordinarily kept on that vessel?

A: In the wheelhouse.

331. Q: How did it happen to be in the galley on Saturday night?

A: I took it in because of the rain. If they leave it up top, I always take it down.

Janet Stuart Johnson. Examination-in-Chief (Continued):

332. Q: What is the rifle used for?

A: Shooting seals usually, but we had only shot one.

333. Q: Who brought it aboard?

A: One of the crew, Fred Robertson.

334. Q: And that was the purpose for having it aboard the vessel?

A: Yes.

335. Q: When the argument was taking place, into what two sides were they split? Who was on one side?

A: Earl and Clifford and Mickey Dolan. Tony said he wanted no part in it.

336. Q: Who was on the other side?

A: Vic.

337. Q: There was no one on your husband's side in this argument?

A: No.

338. Q: Did your husband have that knife in his hand before you saw the gun loaded?

A: No.

339. Q: How old was your husband?

A: 38

340. Q: Was he in good health?

A: Yes.

341. Q: Can you explain, Mrs. Johnson, the second bullet which was found in your husband's body?

A: Yes, he was shot I think eleven years ago and the bullet remained in his lung.

342. Q: You knew of that?

A: Yes, a 38 bullet I think it was.

343. Q: What was the quarrel about?

Janet Stuart Johnson. Examination-in-Chief (Continued):

343. A: Bringing liquor aboard the ship. The crew had been told not to bring liquor aboard.

344. Q: Where any other things brought into the argument?

A: Many things, back and forth.

345. Q: Was the language moderate or violent?

A: Well, with those men, what we would consider violent they would consider moderate. They curse a lot more than we do.

Cross-examination, by Mrs. Ray:

346. Q: Mrs. Johnson, what was the condition of your husband that night. Had he been drinking much?

A: No, we had had a baby aboard until nine o'clock that evening, and he had been holding the baby. When he was drinking he pushed his glass away, so that the baby could not touch it.

347. Q: What was the quarrel about?

A: Because of them bringing liquor on board. He had told them there was to be no drinking in the forecastle.

348. Q: But he had been drinking with Earl and yourself and Mr. and Mrs. Silvey, did you not say?

A: No.

349. Q: Earl did not have a drink with you that afternoon or evening?

A: He took a drink of whiskey, but he was not sitting there drinking with us.

350. Q: Who brought the whiskey on board?

A: Earl.

351. Q: Who brought the rum?

Janet Stuart Johnson. Cross-examination (Continued):

351. A: I took one bottle of rum aboard to my husband.

352. Q: But it was not usual to have liquor aboard?

A: No.

353. Q: Why do you suppose your husband objected to it at this time?

A: Because it brought so much trouble. He said this year he was going to stop it, and the crew was not to do any drinking in the forecastle.

354. Q: It was just from August 13th that he decided this?

A: No. It went on. We are not always on the ship when it is in town and he could not stop it altogether. You cant always stop it. They bring liquor down many times when we are not there. He decided there was to be no liquor down there of any kind. He said from that week-end there was to be none.

355. Q: But you did bring a bottle on board?

A: That was for him.

356. Q: For your husband?

A: Yes.

357. Q: He could drink, but not the others. Is that right?

A: He was the skipper.

358. Q: And he could drink, but not the others?

A: That was brought on because we were going out Sunday morning. When it rains he gets very wet and cold out on top of the ship. When he is wet and tired he likes to take a drink.

359. Q: Were they also quarrelling about you?

Janet Stuart Johnson. Cross-examination continued:

359. A: Yes.

360. Q: Was that not what most of the quarrelling was about?

A: No.

361. Q: But this quarrel did continue?

A: Yes.

362. Q: It was mainly about you as time went on, was it not?

A: No.

363. Q: Were you able at all times to see the Accused and your husband?

A: Yes.

364. Q: They were never out of your line of vision?

A: Only when Earl went up on top of the ship.

ANTHONY WILFRED SILVEY, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

365. Q: What is your full name?

A: Anthony Wilfred Silvey.

366. Q: Your are a longshoreman and a fisherman?

A: That is correct.

367. Q: And you are ordinarily known as Tony Silvey?

A: Yes.

368. Q: You are the man who stepped into this room a few minutes ago so that the previous witness could identify you?

A: Yes.

369. Q: And you last worked as a member of the crew of the "London III"?

Anthony Wilfred Silvey. Examination-in-Chief (Continued):

369. A: That's right.

370. Q: Did you spend a portion of last Saturday, August 13th in company with some of the Johnson brothers?

A: I did.

371. Q: With which one did you spend some time that day?

A: With Cliff Johnson.

372. Q: Did you see Earl at all during the daytime?

A: No.

373. Q: What were you and Cliff Johnson doing together that day?

A: I went up town, and then he asked me to go down on the boat.

374. Q: What were you doing up town?

A: I met him in the beer parlour.

375. Q: How many beers did you have?

A: We had two or three, maybe four.

376. Q: How much time did you spend togethar, you and Cliff Johnson?

A: About half an hour or so. After that we went to the boat.

377. Q: How many beers had you had during the course of the day?

A: Oh, maybe ten or twelve. Could be fifteen. I dont know exactly.

378. Q: With whom did you go aboard the "Advance III"?

A: Cliff Johnson and Mickey Dolan.

379. Q: About what time?

A: That's hard to say. I didnt have a watch and I didnt keep track of the time.

380. Q: What were you carrying when you went aboard that vessel?

A: A case of beer.

381.

Anthony Wilfred Silvey. Examination-in-Chief (continued):

381. Q: Whose?

A: Cliff's.

382. Q: That is Cliff. Johnson, who is brother to the Accused, Earl Johnson?

A: Yes.

383. Q: And also brother to the deceased, Vic. Johnson?

A: That's right.

384. Q: And in what shape were you when you went aboard the vessel?

A: Fair.

385. Q: What took place after you got aboard, between Vic Johnson and Earl Johnson particularly?

A: We were going aboard and he says to Cliff "Get off the boat". He says "You're fired". So Cliff says "O. K.".

386. Q: Was Earl in hearing of that?

A: I think he was. I think he was down below in the forecastle.

387. Q: In the forecastle?

A: Yes.

388. Q: Then what happened?

A: He said "O. K., I will go and pack my stuff". He said "You wait for me".

389. Q: Where was Earl then?

A: I did not see him then. I guess he was down below.

390. Q: How did Earl get in to the argument?

A: I guess it was on account of Cliff. Cliff said something about being fired, so then Earl said "Me too".

Anthony Wilfred Silvey. Examination-in-Chief (continued):

391. Q: What bag packing was there?

A: Well, Cliff went down to get his clothes, and he asked me to help him. I went down and got his shoes and his shaving kit.

392. Q: What was Earl doing?

A: I did not notice. I was just down there helping Cliff.

393. Q: After that what happened?

A: I picked up the gum boots and the shaving stuff and went up.

394. Q: Into the galley?

A: Yes.

395. Q: You just picked them up and then went up into the galley?

A: No, at first Vic. did not want me to go up.

396. Q: Vic was in the forecastle?

A: Yes.

397. Q: Had the quarrel started then?

A: Yes.

398. Q: Who was in it?

A: When I first went down I stepped between Cliff and Vic.

399. Q: When Vic did not want you to pass, who was quarrelling?

A: All of them.

400. Q: Then what happened?

A: Vic did not want me to go up.

401. Q: Did you go up?

A: Yes, I picked up the gum boots and the shaving outfit.

Anthony Wilfred Silvey. Examination-in-Chief (Continued):

402. Q: And then you went up to the galley?

A: Yes, he forced me to sit down for a while before he would let me go up.

403. Q: Where did you sit when you went up to the galley?

A: I sat on the starboard side of the table in the galley.

404. Q: Could you see what was going on below?

A: Parts of it. I was talking to Mrs. Johnson some of the time.

405. Q: Did you hear anything of the fighting?

A: I heard "I will take you out on shore and beat you up". Something like that.

406. Q: Who said that?

A: Vic, I think.

407. Q: Do you remember the exact wording?

A: No.

408 Q: Shortly following that, what took place?

A: I could not say for sure. They were still arguing and I was still in the galley with Mrs. Johnson.

409. Q: How did the thing end?

A: The next thing I knew I heard a shot. I do not know how long after that was.

410. Q: Did you see the shot fired?

A: No.

411. Q: Where were you when the shot was fired?

A: I was sitting in the galley.

412. Q: From what point did the sound of the shot come?

A: From the forecastle.

Anthony Wilfred Silvey. Examination-in-Chief (Continued):

413. Q: What did you see happen after the shot was fired?

A: I saw Victor twist and turn and fall down against the engine.

414. Q: He fell against the engine?

A: Yes, alongside the engine.

415. Q: Did you stay aboard?

A: Yes, I went down onee, I thought he was only wounded. I went down and thought he was only wounded and I was going to call a doctor. I went down and tried to pick him up, but I couldn't do it. He was too heavy.

416. Q: Did you see any blow struck before the shot was fired?

A: No.

Cross-examination, by Mrs. Ray:

417. Q: You were sitting in the galley talking to Mrs. Johnson?

A: Yes.

418. Q: While the quarrel was going on?

A: Yes.

419. Q: Where was she?

A: Part of the time she was on the port side of the table, that is the left hand side of the table, that is called the port side.

420. Q: She was sitting facing you?

A: Yes, sometimes she was sitting, and sometimes she was standing.

421. Q: At any time during the quarrel did you see a knife

Anthony Wilfred Silvey. Examination-in-Chief (Continued):

421. Q. (Cont'd): in Victor Johnson's hand?

A: Yes I saw it.

422. Q: When?

A: When I went down to stop the fight between him and Cliff he had a knife. I stepped between them and tried to talk them out of being so rash. I believe I succeeded to a certain extent. They stopped for a while.

423. Q: Did you know what all the argument was about?

A: No, and I do not know what all the argumentx was about now.

MICHAEL PATRICK DOLAN, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

424. Q: What is your full name?

A: Michael Patrick Dolan.

425. Q: You are a fisherman and a logger?

A: That's right.

426. Q: And you live at 250 St. George Street, Nanaimo?

A: That's right.

427. Q: Are you married to the sister of the Accused and of Vic Johnson?

A: Yes.

428. Q: You are not this year a member of the crew of the "Izumi III"?

A: No.

429. Q: You were formerly on another vessel with Vic. Hohnson?

A: Yes.

Michael Patrick Dolan. Examination-in-Chief (Continued):

430. Q: How did you spend the early part of Saturday afternoon last?

A: I met Cliff.

431. Q: That is Cliff, the brother of the Accused, Earl Johnson?

A: Yes.

432. Q: What were you doing?

A: We were drinking a little beer, we were in and out of beer parlours, and we had a few whiskies.

433. Q: Where did you go that evening, eventually?

A: To the "IzumiIII".

434. Q: With whom?

A: Cliff Johnson and Tony Silvey.

435. Q: Who is the last witness and who is now sitting in this Court?

A: Yes.

436. Q: Did any of the three of you take anything along with him?

A: Yes, two cases of beer.

437. Q: What shape were you in?

A: I was feeling very good.

438. Q: What happened when you got aboard the "Izumi III"?

A: Vic told Cliff to pack his gear and get off the boat.

439. Q: Was Earl able to hear that?

A: I dont know. He was down in the forecastle.

440. Q: Please put in only the conversation that you know Earl heard. What was the first thing that Earl was involved in, either that he heard or

Michael Patrick Dolan. Examination-in-Chief (Continued):

440. Q:(Cont'd): said.

440. A: We came on board the ship and Vic raised Hell about Cliff. He wanted Cliff off the boat. We went down the forecastle and Earl was packing his gear.

441. Q: What was Earl packing his gear for, any reason that you know of?

A: No, he was aboard the boat when we got there.

442. Q: And to what extent had he carried this packing out?

A: He was pretty well packed, I think.

443. Q: What was Vic doing?

A: Oh, he was bawling them out and raising Hell. He jumped on Cliff about he said he was trying to make his woman.

444. Q: Who started the argument?

A: Victor started the fight. He started on Cliff first, he accused him of trying to make his woman. Cliff said he was lying.

445. Q: Did Vic have any argument with Earl at all?

A: Yes, all three of them were arguing.

446. Q: In this argument, was anyone on Vic's side?

A: Well, I was trying to stop it. I didnt want to see them fight.

447. Q: What took place after the argument had progressed?

A: They kept on arguing and swearing at eachother, then Vic said "Jenny, get my knife" and she got it.

448. Q: Did you see that?

A: I heard it. The next thing I know Vic has a

Michael Patrick Dolan. Examination-in-Chief (Continued):

448. A. (Cont'd): knife in his hand. He hit me on the chin and knocked me down.

449. Q: On to the floor?

A: No, on to the seat. The next thing I knew he had got the knife. He said "Look out, or I'll cut you up too".

450. Q: You had been pushed on to the seat?

A: Pushed on to the seat? I had been hit on to the seat.

451. Q: Then what happened?

A: He was swinging the knife around. Earl grabbed his arm, but I did not see any blood.

452. Q: Was Earl wearing a coat or not?

A: Yes, he had a suit on.

453. Q: Then what happened?

A: Then the argument started. Vic was standing in the companionway, and I was sitting on the bench. Vic was swinging the knife and telling them he was going to cut their throats, and the next thing I know there is a shot.

454. Q: Who shot that?

A: I saw Earl with the gun, but I did not see him shoot it.

455. Q: You heard a shot?

A: Yes.

456. Q: What happened to ~~HIM~~ Vic?

A: He slumped down and fell down.

457. Q: Did he appear to be lifeless from a few minutes after that?

Michael Patrick Dolan. Examination-in-Chief (Continued):

457. A: He kind of gargled. He tried to say somthing.

458. Q: Where did you spend the rest of that night?

A: In the gaol down here.

459. Q: Where did Earl spend the rest of that night?

A: He was in gaol too.

460. Q: And Cliff?

A: Yes.

461. Q: And Tony Silvey?

A: Yes, they locked him up too.

462. Q: Did you hear the woman Jenny say anything to Earl immediately after the shooting?

A: Yes I heard her say "You have killed him".

463. Q: If an epithet was used you may repeat it.

A: Yes, she said "You dirty son of a bitch, you have killed him.

Mrs. Ray: No questions.

DAVID CLIFFORD JOHNSON, having first been duly SWORN, was examined by Mr. Brown and testified as follows:

464. Q: What is your full name?

A: David Clifford Johnson.

465. Q: Are you a fisherman?

A: Yes.

466. Q: And a brother of the Accused, Earl Johnson?

A: Yes.

467. Q: And also the brother of the man who was killed last Saturday night and who is usually known as Vic Johnson, but whose full name was Vivian Charles

David Clifford Johnson. Examination-in-Chief (Continued):

467. Q. (Cont'd): James Mohnson?
A: Yes.
468. Q: How did you spend most of last Saturday, a week ago, August 13th?
A: Around the beer parlours.
469. Q: The whole of the day?
A: Most of the day, not all of the day.
470. Q: What were you drinking?
A: Beer and rye.
471. Q: With whom?
A: By myself most of the day.
472. Q: Were you then a crew member of the "Izumi III"?
A: Yes.
473. Q: Who was the master of that vessel?
A: Victor.
474. Q: Your brother?
A: Yes.
475. Q: At what time did you go aboard the vessel that evening?
A: Between nine and ten.
476. Q: With whom?
A: My brother-in-law Mickey Doland and Tony Silvey.
477. Q: By Mickey Dolan do you mean the last witness, who is now in this court room?
A: Yes.
478. Q: What did you carry on to the boat?
A: I had a dozen beer.
479. Q: How much liquor was there aside from that?
A: Tony was carrying a dozen beer too.
480. Q: You said that you had been drinking all day. In

David Clifford Johnson. Examination-in-Chief (Continued):

480. Q. (Cont'd): what shape were Tony and Mickey Dolan?
A: They were not drunk, but they were feeling their liquor.

481. Q: In what shape were you?
A: I was drunk.

482. Q: After you got aboard what happened?
A: I was ordered to pack up and get off the boat.

483. Q: By whom?
A: By the skipper, my brother.

484. Q: Did you pack up?
A: Yes, I was packing.

485. Q: Did Earl take any part in that incident?
A: Earl was packing up too and my brother said "That does not include you". He said "That son of a bitch has got to get off the boat" or some words to that effect.

486. Q: In what condition was Earl?
A: Earl was sober as far as I know.

487. Q: Did Earl continue to pack after his brother had told him that he did not need to?
A: I believe so.

488. Q: Did you get packed up?
A: Not quite.

489. Q: When you got nearly packed up what were you doing, you and Earl and Mickey?
A: We passed a bottle around and had a drink.

490. Q: What took place after that?
A: My brother came down after me.

491. Q: Your brother Vic?
A: Yes.

David Clifford Johnson. Examination-in-Chief (Continued):

492. Q: What was he trying to do?

A: He came down after me with a knife. He said he was going to cut me from asshole to breakfast time. He said "I'm going to cut your goddamn throat". I dont remember the exact words.

493. Q: Did he in fact touch you?

A: No.

494. Q: Did you have any mark on you at all?

A: No, but I no doubt would have unless for Tony Silvey.

495. Q: Why was he making those threats?

A: He accused me of trying to make his wife, Jenny.

496. Q: If you were packed up enough to get off, why was he still after you. Were you going fast enough to suit him?

A: I think that was the trouble. I was not going fast enough.

497. Q: What happened after he threatened you with the knife?

A: He left the forecastle and went up to the galley or the wheel house, and the second time he came down he brought the gun down.

498. Q: What did he do with the gun after that?

A: I think he laid it down on the bench just above the batteries.

499. Q: What followed that?

A: Argument.

500. Q: How did the argument end?

A: He came back again after me with the knife. My brother Earl grabbed me and threw me behind him.

David Clifford Johnson. Examination-in-Chief (continued):

501. Q: What took place at that moment?

A: That's when my brother was shot.

502. Q: Did you see or hear the shot?

A: I did not see it but I heard it. I was behind my brother.

503. Q: Behind Earl?

A: Yes.

504. Q: Who did the shooting?

A: I dont know. I didnt see the shooting.

505. Q: What happened to your brother Victor immediately following the shooting?

A: When I got up again Vic was staggering back. I went up to the galley. Jenny was there with a hatchet and I went up through the skylight.

506. Q: Did you stay there until your brother died?

A: I do not know whether he was dead then or not.

507. Q: Did your brother ever use a knife on you before?

A: No.

508. Q: And he did not touch you that night?

A: No, but he was after me. He was not after anyone else.

Cross-examination, by Mrs. Ray:

509. Q: When you went down into the galley, did this quarrel continue abiut Vic's wife?

A: Into the galley?

510. Q: Into the forecastle?

A: Yes.

511. Q: Was that the main trouble at that time?

A: As far as I know, yes. When I left the boat that

David Clifford Johnson. Examination-in-Chief (Continued):

511. A. (Cont'd): morning there was nothing the matter. I moved the boat and I told Vic where I had moved it to. He said "O. K. Sunday morning, eight o'clock sharp".

512. Q: Were you ever told not to bring liquor aboard?
A: No.

Re-direct examination, by Mr. Brown:

513. Q: Did you see Earl get hurt at all that evening?
A: When I came back from trying to get out through the galley I saw blood on my brother's arm.

514. Q: Did you see how he got that?
A: No.

FREDERICK STEWART ROBERTSON, having first been duly SWORN, was examined by Mr. Brown and testified as follows:

515. Q: What is your full name?
A: Frederick Stewart Robertson.

516. Q: Mr. Robertson, you are a fisherman?
A: Yes, sir.

517. Q: And you have been, during this season, a crew member of the "Izumi III", a seine boat?
A: Yes.

518. Q: I show you a single-shot 22 rifle, marked "Exhibit '10'" in this case. What is that?
A: It belongs to my wife, but I am responsible for it.

519. Q: Where did you recently take it?
A: To the "Izumi III".

Frederick Stewart Robertson. Examination-in-Chief (Cont'd):

520. Q: What was it used for on the boat?

A: Seals.

521. Q: Where was it ordinarily kept?

A: Sometimes in the galley, sometimes in the wheel house or on top.

522. Q: Was it ever kept in the forecastle?

A: No. Yes it was, once. I had it by my bed.

523. Q: Do you know where it was when you arrived in port last Saturday?

A: In the galley.

524. Q: Loaded or unloaded?

A: Unloaded.

525. Q: Who was the master of that vessel?

A: Vic Johnson.

526. Q: Who were the crew members, besides you, the Accused and Earl Johnson?

A: There's Anderson -

527. Q: What is his first name?

A: I dont know.

528. Q: Yes?

A: And Bert. I dont know his last name.

529. ~~THEXXXXXXXX~~ Q: Who else?

A: That's all.

530. Q: Did Mrs. Janet Johnson travel on the boat, the skipper's wife?

A: Yes, she's the cook.

531. Q: Do you take liquor to the fishing grounds?

A: Once in a while I take a case of beer.

532. Q: What about liquor in the forecastle? Have you had any trouble about liquor on that boat this year

Frederick Stewart Robertson. Examination-in-Chief (Cont'd):

533. Q. (Cont'd): up to Saturday?

A: No, not on board. There is no heavy drinking throu gh the week. He said there was to be no heavy drinking on the fishing grounds.

534. Q: Were those orders?

A: Yes, he said to stay sober on the fishing grounds.

535. Q: When would the next fishing start?

A: We were supposed to leave Sunday morning at eight o'clock.

Mrs. Ray: No questions.

The case was then adjourned until Saturday, August 20th, 1949 at 10:30 a. m.

August 20th, 1949 10:30 a. m.

FREDERICK ROSS GIBSON, having first been duly SWORN, was examined by Mr. Brown, and testified as follows:

536. Q: What is your full name?

A: Frederick Ross Gibson.

537. Q: Your occupation?

A: Constable, British Columbia Provincial Police, stationed at the City of Prince Rupert, County of Prince Rupert, Province of British Columbia.

538. Q: And were you such on Saturday, August 13th last?

A: Yes.

539. Q: Did you have occasion to go to a boat known as the "Izumi III"?

A: I did.

540. Q: Tied up at the Stadard Oil Dock in the City of

Frederick Ross Gibson. Examination-in-Chief (Continued):

540. Q. (Cont'd): Prince Rupert?
A: That's right.

541. Q: And did you see the following people that night: Mickey Dolan, Tony Silvey, Clifford Johnson and Mrs. Janet Johnson?
A: I did.

542. Q: In what condition was Dolan?
A: Intoxicated.

543. Q: Tony Silvey?
A: Intoxicated.

544. Q: When did you see Clifford Johnson?
A: When I went down below.

545. Q: Clifford Johnson?
A: No, I saw him in the office in the gaol.

546. Q: How much later than when you saw the others on the boat?
A: At least an hour, or maybe later.

547. Q: Would it be about midnight?
A: Yes.

548. Q: In what condition was he then?
A: Intoxicated.

549. Q: Is Clifford Johnson a brother of the Accused and a brother of the deceased?
A: He is.

550. Q: Did you see Mrs. Janet Johnson on that boat?
A: Yes.

551. Q: In what condition was she?
A: Sober.

552. Q: With whom did you board that vessel?
A: Corporal Taylor.

Frederick Ross Gibson. Examination-in-Chief (Continued):

553. Q: In what order of precedence?

A: Corporal Taylor was before me and I was immediately behind him.

554. Q: Where was Mrs. Janet Johnson when you boarded the boat?

A: In the galley.

555. Q: In what order did you go down into the forecastle?

A: Mrs. Johnson led the way, then Corporal Taylor, then myself.

556. Q: What took place as you went into the forecastle?

A: Mrs. Johnson went down the steps first. There was a seat alongside there from which she grabbed a hatchet or axe.

557. Q: I show you an axe, marked "Exhibit '8'" in this case. Do you recognize it?

A: This is the axe picked up by Mrs. Johnson from the seat in the forecastle of the boat.

558. Q: What did she do with it?

A: She took it and went over to Clifford Johnson and she was waving it around in the air.

559. Q: Clifford Johnson, or the Accused?

A: The Accused, who was sitting on a bunk in the forecastle.

560. Q: How far forward?

A: As far forward as he could get.

561. Q: What happened then?

A: The Accused grabbed his shoulder with his hand.

562. Q: Which shoulder?

A: The left.

563. Q: When you enetreed the forecastle, where did you

Frederick Ross Gibson. Examination-in-Chief (Continued):

563. Q: (Cont'd): see the body of the deceased, Vivian Johnson?

A: Beside the engine, with his feet across.

564. Q: Did Corporal Taylor and Mrs. Johnson have to pass over the body to get to the Accused?

A: Yes.

565. Q: What did you observe then?

A: A knife between the legs of the deceased.

566. Q: What was done with it?

A: Corporal Taylor requested me to pick it up.

567. Q: What did you do?

A: I picked it up and gave it to him.

568. Q: I show you a knife, "Exhibit '9'". Will you tell me what that is?

A: That is the knife I picked up.

569. Q: What became of the axe that had been wielded by Mrs. Johnson.

A: Corporal Taylor took the axe from Mrs. Johnson.

570. Q: Did you hear any conversation in the presence of the Accused at that time?

A: No.

571. Q: Did you later hear Mrs. Johnson say anything about the Accused in his presence while you were in the forecastle?

A: She accused him of shooting the gun.

572. Q: Was the Accused able to hear what she said?

A: He was.

573. Q: Who arrested the Accused?

A: Corporal Taylor.

574. Q: After what statement made by whom?

Frederick Ross Gibson. Examination-in-Chief (continued):

574. A: After Dr. MacDonald said Vivian Johnson was dead.

575. Q: How did Corporal Taylor know whom to arrest?

A: Mrs. Johnson was there and said that the Accused was the one who fired the bullet.

576. Q: Did the Accused hear her say that?

A: He was there, yes, and she was right beside him.

577. Q: Did you see Corporal Taylor pick up any weapon or instrument in addition to the knife and the axe?

A: And the gun.

578. Q: Did you see him pick up the gun?

A: Yes.

579. Q: I show you a single shot 22 rifle, marked "Exhibit '10'" in this case. Do you recognize it?

A: This is the rifle picked up by Corporal Taylor.

580. Q: Did you see him pick up or handle anything else in connection with this case on that vessel?

A: He had an empty 22 cartridge.

581. Q: Did you see him pick that up?

A: Yes.

582. Q: Anything else?

A: Not that I can recall.

583. Q: During what time did these incidents take place?

A: Shortly after ten o'clock.

584. Q: When did you leave that vicinity?

A: It must have been after eleven, but I cannot say definitely.

585. Q: You were around there about an hour?

A: Yes, or longer.

586. Q: Who brought the Accused to the Police Station?

A: Corporal Taylor and myself.

Frederick Ross Gibson. Examination-in-Chief (Continued):

587. Q: Who searched him and stripped him?

A: I did, with the assistance of Corporal Taylor.

588. Q: How many wounds did he have on his body?

A: One.

589. Q: Where?

A: On his left shoulder.

590. Q: No other wounds?

A: No.

591. Q: Bruises?

A: None that I noticed at the time.

592. Q: In what condition was the Accused?

A: Intoxicated.

593. Q: To what extent compared to some of the others whom you mentioned as being drunk?

A: About the same I would say.

594. Q: Did you attend the autopsy at the Prince Rupert City Morgue the following day?

A: Yes.

595. Q: Which was performed by Dr. MacDonald?

A: Yes.

596. Q: Who else was there?

A: Sergeant Potterton.

597. Q: Anyone else?

A: Mr. VanMeer, the photographer.

598. Q: Did you recognize the body on which the autopsy was performed?

A: I did.

599. Q: Where had you seen it previously?

A: Aboard the boat.

600. Q: Was it the same one as you had stopped over to

Frederick Ross Gibson. Examination-in-Chief (Continued):

600. Q. (Cont'd): pick up the knife?
A: Yes.

601. Q: Was anything found in the body after Sergeant Potterton had left?
A: Yes, a bullet was found.

602. Q: In your presence?
A: Yes.

603. Q: By Dr. MacDonald?
A: That's right.

604. Q: What was done with the bullet after the doctor had found it?
A: It was given to me. I brought it to the office and gave it to Sergeant Potterton.

605. Q: I show you an envelope. Have you any way of identifying it? Open the envelope and look at it.
A: This is the bullet given to me by Dr. MacDonald.

606. Q: Is it still covered with scar tissue?
A: Yes.

607. Q: Was it in that condition when you received it?
A: Yes.

608. Q: And it is the one given by you to Sergeant Potterton?
A: Yes.

(Envelope containing bullet marked "Exhibit '17'").

609. Q: Did you see some pictures taken at the autopsy?
A: Yes.

610. Q: Who directed the taking of those pictures?
A: Sergeant Potterton.

Frederick Ross Gibson. Examination-in-Chief (Continued):

611. Q: Who was actually taking them?

A: Mr. Van Meer.

612. Q: I show you Exhibits "3" to "7" inclusive. Will you state whether they seem to you to depict what was being photographed at that autopsy on Sunday afternoon by Mr. Van Meer?

A: Those are the pictures taken by Mr. Van Meer.

613. Q: Are they pictures of the body of the deceased?

A: They are.

614. Q: When you and Corporal Taylor stripped the Accused last Saturday night, did you notice the jacket he was wearing?

A: Yes.

615. Q: I show you a grey jacket. Do you recognize it?

A: This is the jacket the Accused was wearing last Saturday evening.

616. Q: How did that come in to your possession?

A: Mrs. Ray gave it to me.

617. Q: Mrs. Ray, Counsel for the Accused?

A: Yes.

618. Q: On what day?

A: I cannot remember exactly.

619. Q: Was it given back to the Accused after you had taken it off him on Saturday night?

A: Yes.

620. Q: Where has it been since?

A: Since it was given back to me it has been in the vault downstairs.

621. Q: Did you notice the tear in the left sleeve of that coat, near the shoulder, when the Accused was

Frederick Ross Gibson. Examination-in-Chief (Continued):

621. Q: (Cont'd): stripped Saturday night?
A: Yes.

622. Q: Was there any blood visible on the outside of the sleeve?
A: No.

623. Q: There are brown marks surrounding that tear. You saw that tear made, did you?
A: I cannot say that I saw that tear made.

624. Q: Do you know if that brown mark is blood?
A: There was blood on it Saturday, but not on the outside.

(Jacket marked "Exhibit '18'").

625. Q: Did Sergeant Potterton arrive on the vessel "Izumi III" before you left it?
A: Yes.

626. Q: And the Coroner?
A: That's right.

627. Q: Was the doctor still there when the Sergeant got there?
A: Yes.

Cross-examination, by Mrs. Ray:

628. Q: Did Mrs. Janet Johnson preceed you and Corporal Taylor down to the forecastle?
A: Yes, she went first.

628. Q: Was she carrying the hatchet at that time?
A: Not at that time, no.

630. Q: Just what time did you see her pick up the hatchet?
A: As she was going down the steps. I was behind

Frederick Ross Gibson. Cross-examination (Continued):

630. A: (Cont'd): Corporal Taylor at the time.

631. Q: And she was preceeding Corporal Taylor?

A: Yes.

632. Q: Did you see Corporal Taylor take the hatchet away from her?

A: Later, I did.

633. Q: Did he take it away from her as she struck the Accused?

A: After she had been waving it around.

634. Q: When you examined the Accused in the gaol, would you really have been able to tell whether there was a bruise on his body?

A: We checked his body, but we could not find one.

635. Q: His skin is pretty dark, is it not?

A: Yes.

636. Q: So that it would be difficult to tell whether he was bruised or not?

A: That's right.

LAWRENCE ALBERT NEWTON POTTERTON, having first been duly SWORN, was examined by Mr. Brown and testified as follows:

637. Q: What is your full name?

A: Lawrence Albert Newton Potterton.

638. Q: You are now and were on Saturday last N. C. O. in charge of the Prince Rupert City Detachment of the British Columbia Provincial Police?

A: I was.

639. Q: Did you have occasion to go to the Standard Oil Wharf in the City of Prince Rupert last Saturday

Lawrence A. N. Potterton. Examination-in-Chief (Continued):

639. Q. (Cont'd): night?

A: I did.

640. Q: Arriving there at what time?

A: Approximately ten minutes to eleven.

641. Q: Did you board the boat "Izumi III"?

A: I did.

642. Q. What other officers were there then?

A: Corporal Taylor and Constable Gibson.

643. Q: Both of your force?

A: Yes.

644. Q: What dead body was there?

A: The body of a man I knew as Vic Johnson.

645. Q: Do you know his full name? Have you made enruiries?

A: Vivian Charles James Johnson.

646. Q: How long have you known him?

A: I have known him reasonably well for the past twelve years.

647. Q: That was in fact the person you knew whom you saw dead there?

A: Yes.

648. Q: Was Dr. MacDonald there?

A: Yes, he was on the boat.

649. Q: Is that the Dr. MacDonald who testified in this case?

A: Yes.

650. Q: Was an autopsy performed on that body on the following day, Sunday, August 14th?

A: Yes.

651. Q: On the body of Vivian Charles James Johnson?

Lawrence A. N. Potterton. Examination-in-Chief (Continued):

651. A: Yes.

652. Q: Whom you had seen dead the previous night on that vessel?

A: Yes.

653. Q: Did you see anything extracted from the body?

A: Yes, I saw the doctor take a 22 calibre rifle bullet from the body.

654. Q: I show you an envelope marked "Exhibit 'A' for Identification". Will you open the envelope, show us what is in it and tell us what it is?

A: This is the 22 calibre bullet which I saw Dr. MacDonald extract from the body of this man.

655. Q: Last Sunday afternoon under the circumstances you have just narrated?

A: Yes.

656. Q: In addition to saying that it is a 22 calibre bullet, can you state anything additional as to the particular type of bullet?

A: It appears to be the bullet from a 22 long rifle cartridge.

(22 calibre bullet marked "Exhibit 19").

657. Q: Did you see the witness Mickey Dolan on that vessel last Saturday evening?

A: I do not remember seeing him on the vessel.

658. Q: Did you see him at the Police Station about midnight that night?

A: Yes.

659. Q: What was his condition?

A: He was drunk.

Lawrence A. N. Potterton. Examination-in-Chief (Continued):

660. Q: Did you see Clifford Johnson, the brother of the Accused that night?

A: Yes.

661. Q: What was his condition?

A: Drunk.

662. Q: Did you see the witness Tony Silvey at the police station or aboard the vessel?

A: I saw him coming off the vessel.

663. Q: In what condition was he?

A: He also was drunk.

664. Q: Did you see Mrs. Janet Johnson, the wife of the dead man, that night?

A: Yes.

665. Q: Did you have occasion to spend some time with her?

A: I spent a full hour with her.

666. Q: In what condition was she?

A: She was sober. She was a little excited at first, but she calmed down after a while.

667. Q: Would you say that she was relatively sober or that she was cold sober?

A: There was nothing to indicate that she had taken any intoxicant whatsoever.

668. Q: None whatever?

A: No.

669. Q: Your observations of Silvey, Clifford Johnson and Mickey Dolan were made about what time?

A: About 1 o'clock or 1:30 in the morning, probably about 1 o'clock.

670. Q: Did you see the Accused that evening?

A: I saw the Accused on the boat when I first got

Lawrence A. N. Potterton. Examination-in-Chief (Continued):

670. A. (Cont'd): there.

671. Q: Were you able to judge as to his condition?

A: Not at that time.

672. Q: Was he walking around?

A: No, he was on the bunk. He had the handcuffs on. He was sitting down, and he did not speak.

673. Q: Did you see the Accused the following morning?

A: Yes.

674. Q: About what time?

A: 10:30 or 11 o'clock.

675. Q: Who else was with you at that time?

A: Corporal Taylor.

676. Q: What did Corporal Taylor do or say?

A: Corporal Taylor read the usual warning to him. He told him what he was charged with, and read the full warning.

677. Q: What book did he read it from?

A: Daly's Criminal Procedure, I think. It might have been the Code.

678. Q: What took place then?

A: I asked the Accused why he had shot his brother.

679. Q: Was the Accused able to understand and comprehend the warning?

A: Yes.

680. Q: In what state was he?

A: Sober.

681 Q: Alert?

A: Yes.

682. Q: And then you asked him what?

A: I asked him why he had shot his brother.

Lawrence A. N. Potterton. Examination-in-Chief (Continued):

683. Q: Then what happened?

A: He replied that he had shot him in self-defense, that his brother had had a knife and that he had stabbed him in the arm. I asked him if he had anything else to say and he said no, other than that he wanted the services of a lawyer.

684. Q: Stepping back again, Sergeant Potterton, did you attend the morgue early on Sunday morning with Corporal Taylor?

A: Yes, at about 2:15 a. m. on Sunday, August 14th.

685. Q: For what purpose?

A: I wanted to strip the body.

686. Q: Did you do that?

A: Yes. Corporal Taylor and I did that.

687. Q: Will you pick out from these exhibits what you recovered arising from that?

A: There was this red tie.

688. Q: Exhibit '16'?

A: Yes. This brown overcoat.

689. Q: Exhibit '15'?

A: Yes. The grey sweater.

690. Q: Exhibit '14'?

A: Yes, and this striped shirt.

691. Q: Exhibit '13'?

A: Yes.

692. Q: Those were taken by you?

A: Yes.

693. Q: And what was done with them?

A: They were taken by Corporal Taylor and brought to the Police Station.

Lawrence A. N. Potterton. Examination-in-Chief (continued):

694. Q: At the autopsy that afternoon, who was present besides yourself and Dr. MacDonald?

A: Constable Gibson was there and Mr. Van Meer was there.

695. Q: Mr. Van Meer who is a photographer?

A: Yes.

696. Q: Did he take any pictures?

A: He did, under my direction.

697. Q: I show you Exhibits "3" to "7" inclusive, photographs of the body of a man. Did you see these taken?

A: Yes.

698. Q: Where and when?

A: They were taken between 1:30 and 2 o'clock on the afternoon of Sunday, August 14th, 1949 at the morgue in the City of Prince Rupert.

699. Q: Do they faithfully portray parts of the body of the late Vic. Johnson which they purport to portray?

A: They do.

Mrs. Ray: No questions.

ARCHIBALD HAWTHORNE TAYLOR, recalled, was examined by Mr. Brown, and testified as follows

700. Q: You are still under oath, Corporal Taylor. You mentioned yesterday that you and Constable Gibson searched and stripped the Accused when he was brought to the Prince Rupert City Gaol, late on the evening of August 13th last?

A: Yes.

Archibald Hawthorne Taylor. Examination-in-Chief (Continued):

701. Q: I show you Exhibit "18", a grey suit coat. Is that recognizable to you?

A: This is the property of the Accused and is the one that he was wearing when he was arrested last Saturday.

702. Q: When was it taken from him?

A: It was taken from him in the police office at the time of his admittance.

703. Q: Later the same evening?

A: Yes.

704. Q: Was it returned to him after he was stripped?

A: Yes.

705. Q: I draw to your attention a hole or tear in the upper left sleeve.

A: Yes.

706. Q: Where is that with reference to where you saw Mrs. Janet Mohnson hit him?

A: That is where Mrs. Johnson hit him.

707. Q: With the axe?

A: Yes, in my presence.

708. Q: Did you see any blood on the outside of that coat?

A: No, none was visible on the outside and I did not see any other than on the inside.

709. Q: Was there any blood on his shirt?

A: Yes.

710. Q: But that was not visible from the outside?

A: No.

711. Q: That is, from the time you first saw him until you stripped him, no blood showed on that coat?

A: Absolutely none whatever.

Archibald Hawthorne Taylor. Examination-in-Chief (Cont'd):

712. Q: And the coat was returned to him that evening?
A: Yes.

Cross-examination, by Mrs. Ray:

713: Q: When you say that that is where Mrs. Johnson hit the Accused with the axe, you cannot swear that that is the exact spot can you?
A: It is approximately the spot where Mrs. Johnson hit him with the axe, and she hit him hard.

Mr. Brown: That is the case for the Prosecution, Your Worship.

Magistrate: (to Accused): Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything, unless you desire to do so; but whatever you say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favour, and nothing to fear from any threat, which may have been held out to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial, notwithstanding such promise or threat.

Accused: I have nothing to say at this time.

Magistrate: I find a prima facie case in this instance, and you are committed to stand trial at the next court of competent jurisdiction.

.....
Police Magistrate.

I, Harold Dennis Thain, of the City of Prince Rupert, County of Prince Rupert, Municipal Clerk, make oath and say:

1. That I am the stenographer duly appointed by Walter D. Vance, Esquire, Police Magistrate, to report the evidence in this case.

2. That the foregoing eighty-one (81) pages signed by the said Walter D. Vance, Esquire, Police Magistrate, contain a true and correct transcription of the notes taken by me as such stenographer as aforesaid, to the best of my skill and ability.

SWORN BEFORE ME, at Prince Rupert, B. C. this 25th day of August, A. D. 1949.

H. D. Thain
.....

A. A. Wrathall
.....

A COMMISSIONER FOR TAKING AFFIDAVITS IN THE PROVINCE OF BRITISH COLUMBIA.